

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Lubbock, Texas

**CITY TRANSIT MANAGEMENT COMPANY, INC.
d/b/a CITIBUS¹**

Employer

and

Case No. 16-RC-10566

**UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC**

Petitioner

DECISION AND ORDER

United Steelworkers of America, AFL-CIO, CLC, hereinafter referred to as the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all regular full-time and part-time operator/drivers, maintenance mechanics, custodians and dispatcher employed at the Employer's facility located at 801 Texas Avenue, Lubbock, Texas; excluding all other employees including schedulers, office/clerical employees, professional employees, guards and supervisors as defined in the Act. At the time of the petition, the Employer employed about 120-130 employees in the petitioned-for unit. Although the Employer stipulated to the appropriateness of the above-described bargaining unit, the Employer contends that the Board should not assert jurisdiction over the Employer because it is not an employer within the meaning of the Act, i.e., the Employer contends it is a political subdivision of the City of Lubbock. Petitioner contends that

¹ The Employer's name appears as amended at the hearing.

the Employer maintains sufficient control over wages, hours and other terms and conditions of employment of employees to engage in collective bargaining and that it would be appropriate to assert jurisdiction. A hearing officer of the Board held a hearing and the Employer timely filed brief with me.

Based on the record evidence, I conclude that the petition should be dismissed because the Employer is a political subdivision of the City of Lubbock based on the fact that its manager is responsible to public officials.

STATEMENT OF FACTS

The Employer (Citibus), a Texas corporation engaged in the provision of public transportation services for the City of Lubbock (the City) is a wholly-owned subsidiary of McDonald Transit Associates, Inc. McDonald Transit Associates (MTA), also a Texas corporation, provides management services in the transportation industry inside and outside the State of Texas. In the performance of those services, during the past 12 month period MTA derived gross revenues in excess of \$250,000 and performed services valued in excess of \$50,000 for various customers in states other than the State of Texas.

Pursuant to a contract between MTA and the City, MTA created the Employer to assume responsibility for the public transportation operations of the City. The initial contract was entered into in October 1983. The current contract is effective from October 1, 2003 through September 30, 2008. MTA, with the approval of the City, provides a general manager to manage the operations and the City transfers its transportation employees to Citibus. The contract specifically identifies John L. Wilson as the General Manager of Citibus. Any successor to Wilson will be with the advice and consent of the City. All of the City's transportation offices,

office furniture, equipment, materials, fuels, supplies, rolling stock, bus maintenance and storage facilities and equipment are provided to Citibus for its use in providing transportation services.

When the relationship between MTA and the City was initially established, the City employed a liaison officer who had the responsibility to oversee the bus operation. The record reveals that under the current structure, Craig Farmer, the Managing Director of Planning and Transportation is the liaison officer for the City. As the liaison officer, Farmer may attend Citibus staff meetings and oversees wages and fringe benefits of Citibus employees.

MTA receives a set monthly fee for its services; all other expenses incurred in maintaining and providing transportation services are reimbursed by the City on a monthly basis. The City provides general wage ranges to Citibus for its employees; actual wages for employees are determined by Citibus. All revenues collected for providing transportation services are used to cover the costs of maintaining those services. To the extent that such funds are insufficient to meet the payroll and other expenses of the operation, the City provides the funds to cover the shortfall. Citibus is required to maintain liability insurance for the operations and to maintain worker's compensation insurance for all employees. However, the costs of these insurance benefits are paid for by the City.

Through the contract, Citibus becomes the employer of all employees necessary for the operation of the transportation system. As General Manager, Wilson has the authority to hire and fire the employees of Citibus. Citibus provides employee support services as established by the contract. Citibus employees are responsible for preparing an annual budget in line-item format. Once prepared, the budget is submitted to the City's liaison officer for review, who in turn submits it to the City Council for approval. After the City Council approves the budget, neither the General Manager nor the liaison officer may change the budget. The City retains the

right to inspect and audit all data and records of MTA pertaining to its performance of the agreement.

All revenues derived from the operations of the transit system are the property of the City. Citibus collects the revenues and delivers them to MTA, who deposits the monies with banking institutions determined by the City. MTA is required to maintain a record of these transactions in conformity with the City's requirements and that record is available to the City for review.

Responsibilities of the General Manager include, but are not limited to, overall management and policy recommendations, management personnel development and training, evaluation of the operations and procedures, finance, accounting and budgeting, scheduling, transportation and routing, maintenance and purchasing of equipment, customer relations and promotion, employee relations, selection and training of Citibus employees, preparation of an annual budget, preparation of agenda folders and back-up information for all Lubbock Public Transit Advisory Board meetings and preparation of agenda items and back-up information of Citibus-related items for City Council meetings. The General Manager, who acts in the capacity of department head for the transportation department of the City, is responsible to the City Council for the expenditure of funds. He attends budget meetings held by the City transportation department, has represented the City on matters of legislation and reports directly to the liaison officer. All of the General Manager's responsibilities are subject to the reasonable supervision and control of the City.

The Lubbock Public Transit Advisory Board (Advisory Board) was created by the City to oversee the operations of Citibus. The Advisory Board comprises seven members appointed by the City Council. Each Board member serves a three-year term. The Advisory Board holds

monthly meetings and is responsible for making recommendations to the City regarding service changes, fares and large purchases. Citibus staff is responsible for preparing monthly ridership and financial reports for the Advisory Board's review.

The record reveals that the Advisory Board establishes policies that directly impact Citibus' operations. It has approved a drug and alcohol policy for Citibus employees. It also approved, as a cost-cutting measure, a reduction of the low-capacity routes. This reduction eliminated mid-day bus routes, which in turn, affected the working hours of bus operators.

ANALYSIS

Based on the accountability that the General Manager has to the Advisory Board, I find that the General Manager is responsible to public officials and thus, Citibus is exempt from the Board's jurisdiction as a political subdivision of the City of Lubbock.

Section 2(2) of the Act exempts from the Board's jurisdiction *inter alia*, "any State or political subdivision thereof..." The Supreme Court in **NLRB v. Natural Gas Utility District of Hawkins County (Hawkins)**, 402 U.S. 600, 604-605 (1971) stated that for an entity to be exempt from the Board's jurisdiction as a political subdivision, it must either (1) have been created directly by a State, so as to constitute an arm or department of the government or (2) be administered by individuals who are responsible to public officials or to the general electorate. Here, the Employer contends that it is an instrumentality of the City of Lubbock and therefore a political subdivision of the State of Texas. The Employer does not assert, nor do I find, that the Employer was created directly by the State, for the facts reveal that the Employer was created by MTA. Thus, the focus herein lies on the second prong of the **Hawkins** test, i.e., whether the Employer is administered by individuals who are responsible to public officials or to the general electorate.

In support of its position that it meets the second prong of **Hawkins**, the Employer initially relies on an earlier Decision and Order involving the Employer. In Case No. 16-RC-8740, the United Transportation Union filed a representation petition seeking to represent transportation employees of the Employer. In that case, then Regional Director Michael Dunn dismissed the petition on two grounds: (1) that the entity was a political subdivision exempt from jurisdiction; and (2) that the Employer lacked sufficient control over its employees to enable it to engage in meaningful bargaining over conditions of employment with a labor organization. This latter consideration is no longer applicable given the Board's decision in **Management Training Corp.**, 317 NLRB 1355 (1995), wherein the Board held it would no longer consider the close ties between employers to exempt governmental entities. Instead, the Board will only consider whether the employer meets the definition of "employer" under Section 2(2) of the Act and whether such employer meets the applicable monetary jurisdictional standards. **Management Training Corp.**, supra.

As is apparent from the instant record, Citibus, through the General Manager, is directly responsible to the Lubbock Public Transit Advisory Board. This seven-member body is comprised of members of the general public who are appointed by the Lubbock City Council. The City Council is comprised of elected public officials. Advisory Board members are appointed and serve at the pleasure of the City Council to specifically oversee the operation of Citibus. As such, they too are public officials who are responsible to other public officials (the City Council). The record establishes that the General Manager is directly responsible for implementing the policies of the Advisory Board and is required to work within the budget determinations made by the City. Accordingly, I find that Citibus is a political subdivision of the City of Lubbock.

Petitioner's contention that Citibus retains sufficient control over wages, hours, and terms and conditions of employment is no longer the criteria to consider as a result of the Board's **Management Training Corp.** decision. The issue is whether Citibus meets the test as set forth in **Hawkins**.

In a case factually similar to this case, **Connecticut State Conference Board, Amalgamated Transit Union (Connecticut Transit)**, 339 NLRB No. 89 (2003), the Board adopted an administrative law judge's recommendation that jurisdiction be asserted over the employer. The ALJ applied the **Hawkins** two-part test to determine whether the employer was exempt from the Board's jurisdiction as a political subdivision. He found that the employer was neither created directly by the State of Connecticut nor that the managers of the employer were responsible to public officials or to the general electorate. Based on these findings and conclusions, the Board asserted jurisdiction. The instant case is distinguishable from **Connecticut Transit** for two reasons. First, the Employer here disputes that it meets the Board's jurisdictional standards for it asserts that it has no revenues. Second, I find that Citibus General Manager Wilson is responsible to Advisory Board members who are public officials. Thus, Citibus meets the standard set forth in **Hawkins**.

Finally, the Employer contends that principles of collateral estoppel and *res judicata* preclude consideration of whether the Employer continues to be exempt as a political subdivision. With regard to collateral estoppel, the Employer relies exclusively on the fact that the Board has already made a determination of that issue in Case No. 16-RC-8740. Collateral estoppel applies where issues resolved in an earlier litigation between the parties are raised in subsequent litigation involving the same parties. **Fayette Electrical Cooperative**, 316 NLRB

1118, 1119 (1995). In the earlier proceeding the United Transportation Union was the Petitioner; here it is the Steelworkers Union.

Res judicata is also not applicable. In addition to the fact that this case involves a different petitioner, the record reveals that there have been some changes in the relationship between the City and Citibus that eliminate the applicability of *res judicata*. In the earlier case, the liaison officer prepared Citibus' budget and also had the responsibility of administration of Citibus. In the present case, Citibus employees prepare the annual budget for review by the Advisory Board who, in turn, submits it to the City Council for approval. Also, at present, it is the General Manager, not the liaison officer who has the responsibility for managing Citibus' operations. Nevertheless, the present facts establish that the General Manager is responsible to public officials. Consequently, Citibus is exempt as a political subdivision of the City of Lubbock as defined by the Supreme Court in Hawkins.

Based on these facts, and the record as a whole, I find the petition should be dismissed.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, City Transit Management Company, Inc. d/b/a Citibus, a Texas corporation, with a place of business in Lubbock, Texas is engaged in providing transportation services for the City of Lubbock. Citibus is a wholly-owned subsidiary of McDonald Transit Associates, Inc. (MTA), a Texas Corporation that provides management services in the transportation industry. During the past 12 months, MTA derived gross revenues

in excess of \$250,000 and provided services valued in excess of \$50,000 to customers located directly outside the State of Texas.

3. The Petitioner claims to represent certain employees of the Employer.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **April 8, 2004**. The request may **not** be filed by facsimile.

DATED April 1, 2004, at Fort Worth, Texas.

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director
National Labor Relations Board
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